F.R

IN THE HIGH COURT OF SIKKIM

Criminal Revision Application No.12 of 2003

1. M/s National Panasonic India Pvt. Ltd.,
Through its Authorised Representative/
Managing Director,
C-52, Phase-II,
NOIDA (U.P.)

2. Mr. Subhojit Banerjee,
Area Sales Manager,
M/s National Panasonic India Pvt. Ltd.,
Branch Office at 6th Floor,
6(1) Metro Towers,
1, Ho Chi Minh Sarani,
Kolkata – 700 071.

3. Shri Indranil Roy,
Branch Manager,
M/s National Panasonic India Pvt. Ltd.,
6th Floor, 6(1) Metro Towers,
1, Ho Chi Minh Sarani,
Kolkata – 700 071. ... Petitioners.

- VERSUS -

1. Shri B.B. Mishra,
S/o. Late Shri S. Mishra,
Singhi Sadan, P.N.G.S. Road,
Gangtok.

2. State of Sikkim. ... Respondents.

Coram: Hon'ble Mr. Justice N. S. Singh, Judge.

Present: Mr. A. Moulik, Advocate for the petitioners.

Mr. S. Majumdar, assisted by Mr. A. Rathi,
Advocates for respondent No.1.

Mr. N. B. Khatiwada, Public Prosecutor for the respondent No.2.

Date of Decision: 23.09.2003.

JUDGMENT

Singh, J.

The Order dated 9th April 2003 passed by the Judicial Magistrate, East Sikkim at Gangtok in Criminal Case No.8 of 2003 (D.C.) is the subject matter under challenge in this petition under Section 401/482 of the Code of Criminal Procedure filed by the present three petitioners.

2. The complainant, Shri B. B. Mishra, the respondent No.1 herein, filed a complaint-petition against the present three petitioners and two others in the Court of the Judicial Magistrate, East Sikkim at Gangtok for taking necessary legal action against them for committing the offence punishable under Section 420/406/418/427/34 of the Indian Penal Code by contending, inter alia, that the complainant was appointed as a Dealer of the petitioners-company with effect from 1996-1997 and the complainant used to operate selling and exhibiting electronics articles

manufactured by the petitioners-company from his shop-cum-showroom situated at P.S. Road, Gangtok and the complainant used to place orders to the petitioners-company and also used to make advance payment for the said orders. But, over the years huge amount of excess amount accumulated with the accused-persons (petitioners-company and others) which came to the tune of Rs.10,00,000/- (Rupees ten lakhs) only for which the complainant requested the petitioners-company to reconcile the accounts but the accused-company though orally assured the complainant but never gave any reply to the complainant's letter nor did they reconcile the accounts. It is also the case of the complainant that on 24th August 2002, he handed over demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only bearing No.461247 dated 24th August 2002 to the accused No.4 when the accused No.4 was present in Gangtok on 26th August 2002 and along with the said demand draft, the complainant had also placed an order of certain products to be sent to the complainant showroom by the accused-persons. But the accused persons never delivered any goods to the complainant till date against the said demand draft. Instead of it, the accused persons started filing fictitious criminal cases against the complainant and the complainant has been served legal notice by them demanding payment of

Rs.39,38,135 (Rupees thirty nine lakhs thirty eight thousand one hundred thirty five) only and in view of it, the accused persons have induced the complainant in delivering the said demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only and thereafter, cheated the complainant and accordingly, the accused persons have misappropriated the said amount of Rs.2,40,000/- (Rupees two lakhs forty thousand) only as well as amount of Rs.10,00,000/- (Rupees ten lakhs) only which is due and payable to the complainant by the accused persons.

3. The learned Judicial Magistrate examined the complainant and his witness as required under Section 200 of the Code of Criminal Procedure and took the cognizance of offences as against the accused persons under Sections 420/406/418/427/34 of the Indian Penal Code, thus issuing summons to all the accused persons.

4. Being aggrieved by the impugned order dated 9th April 2003 passed by the learned Court below, the present petitioners filed this petition. Supporting the case of the petitioners/accused persons, Mr. A. Moulik, learned counsel contended that there has been no occasion for the petitioners-

company to accept Rs.2,40,000/- (Rupees two lakhs forty thousand) only in draft from Rajeev Electronics on 24th August 2002 for supply of certain goods. The aforesaid payment was received towards the part payment of the outstanding dues of the petitioners-company from the complainant and as such, there has been no communication from the complainant for supply of goods and apart from that the book of accounts maintained by the petitioners-company shows an outstanding of Rs.39,38,136/- (Rupees thirty nine lakhs thirty eight thousand one hundred thirty five) only from the complainant and as such, there is no material on record for establishing the fact that the petitioners-company accepted Rs.2,40,000/- (Rupees two lakhs forty thousand) only in draft from the complainant for supply of certain goods. According to Mr. Moulik, learned counsel, a juristic personality cannot be impleaded as an accused in the instant case but, the complainant had impleaded the petitioner No.1 as accused No.1 in the complaint-petition which is not tenable in the eye of law. While arguing the case, Mr. Moulik, learned counsel has drawn my attention to the related grounds as highlighted/taken by the petitioners in this revision petition and those grounds are as follows: -

" **GROUNDS**

(A) For that the allegation in the complaint do not make out any case against the accused/petitioner and hence the complaint is liable to be quashed.

(B) For that the subject matter of the complaint are civil in nature and consequently no criminal action is maintainable against the accused/ petitioner.

(C) For that the complaint on the fact of it is not maintainable in a much as the accused National Panasonic India Private Limited having its Registered Office at AB-11, Community Centre, Safdarjunj Enclave, New Delhi and Branch Office at 6/1, Metro Towers, 1 Ho Chi Minh Sarani, Kolkata could not be impleaded as neither of them could have the requisite means rea nor could they be punished with imprisonment.

(D) For that the complaint also is liable to be quashed since no allegation has been made against the accused No (a) as the complaint do not make out any case against him either of any positive act or omission or any culpable negligence.

(E) For that the allegation of acccpting a draft of Rs.2,40,000/- for supplying certain materials at Gangtok does not constitute part of the case of action for institution of a criminal case in Gangtok for failure of the Company to supply goods at and from Kolkata.

(F) For that the complaint has been filed in Gangtok malafide and with a view to harass the accused persons. Gangtok court has no jurisdiction to entertain the present complaint.

(G) For that the instant proceedings have been initiated against the petitioner and the other accused persons without any basis whatsoever.

(H) For that no useful purpose will be served by allowing the complain to continue and in the fitness of things, the instant complain is liable to be quashed.

(I) For that there was no material and/or in any event, no sufficient material for entertaining the complaint or taking cognizance thereof.

(J) For that no evidence had been adduced in support of the contention of the complainant save and except the bald oral statement of the complainant/opposite party and his power of attorney holder, the purported complain does not have any legs to stand.

(K) For that the instant proceedings is an abuse of the process of court.

(L) For that the instant complaint has been instituted malafide and to harass the accused persons. "

5. Mr. S. Mazumdar, learned counsel appearing for the complainant, respondent No.1 herein, contended that the learned Judicial Magistrate, East Sikkim, Gangtok rightly passed the impugned order as there are prima facie materials to proceed with the case against the accused persons under Sections 420/406/418/427/34 of the Indian Penal Code. According to Mr. Mazumdar, learned counsel, the

complainant in his complaint-petition clearly stated that on 24th August 2002, he handed over a demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only bearing No.461247 dated 24th August 2002 to the accused No.4 when the accused No.4 was present in Gangtok on 26th August 2002 and along with the said demand draft, the complainant had placed an order of certain products to be sent to the complainant's showroom by the accused persons and the receipt of draft has not been denied by the accused persons, but has been fortified by their people that they adjusted the said demand draft to their outstanding dues and that being the position such controversy can only be decided for which examination of witnesses of the parties is called for for ascertaining the fact that whether the accused persons have committed offences or not. No interference of the impugned order is called for as it is clear that at the time of taking cognizance and issuing of process, the Magistrate concerned is only required to form opinion regarding the commission of offence by the accused persons, Mr. Mazumdar argued. It is also submitted that at the time of taking cognizance, the Magistrate has to look for only prima facie material to proceed in a particular direction as provided in the body of the code and it is not necessary for the Magistrate to dig deep into allegations and materials on record to find out the truth or

falsity of the allegations. Supporting his submission, Mr. Mazumdar, learned counsel relied upon the following decisions reported in (1) 1970 Cr.L.J. 1132 (S.C.), (2) AIR 1977 SC 2229; (3)1977 Cr.L.J.355, 1990 Cr.L.J. 47; (4) 1980 Cr.L.J. 751; (5) (1980) 1 SCC 258; (6) 2001 Cr.L.J. 4705 : 2001AIR SC 3014; (7)1997 Cr.L.J. 168; (8) 1999 Cr.L.J. 4113; (9) AIR 2001 SC 222; (10) AIR 1996 SC 722; (11) 1993 Cr.L.J. 1372 and (12) 1993 Cr.L.J. 3537.

6. Now, this Court is to see and examine as to whether the impugned order suffers from infirmity or irregularity or incorrectness or illegality and whether, the learned Court below applied its judicial mind in the matter while taking cognizance of the offences mentioned above on the basis of the complaint-petition filed by the complainant and whether, the impugned order is tenable in the eye of law or not?

7. The main allegations of the complainant in the complaint-petition find its place in paragraphs 4, 5 and 6 of it which are relevant in the instant case for just determination of the real points in controversy between the parties and, accordingly, these are quoted below: -

"4. That over the years huge amount of excess amount accumulated with the accused persons which came to the tune of Rs.10,00,000/- (Rupees ten lakhs) only and Complainant thereafter requested the accused-Company to reconcile the accounts but the Accused-Company though orally assured the Complainant but never ever gave any reply to the Complainant's letter nor did they reconcile the Accounts.

5. That the Complainant on 24-8-2002 handed over demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only bearing No.461247 dated 24-8-2002 to Accused No.4 when accused No.4 was present in Gangtok on 26-8-2002 and along with said Demand Draft, the Complainant had also placed an Order of certain products to be sent to the Complainant Show Room by the accused persons.

6. That though the accused persons through their authorised representative, accused No.4 had received the said Demand Draft but the accused persons never ever delivered any goods to the Complainant till date against the said Demand Draft. "

8. Before passing the impugned order of 9th April 2003, the learned Judicial Magistrate, East Sikkim, Gangtok examined two witnesses, namely, Shri B.B. Mishra, proprietor of Rajeev Electronics as witness No.1 and one Rajeev Mishra, constituted Attorney of the complainant. These witnesses stated that on most of the occasions goods which were received against the advance payment were less the value of

the payment in advance and the said excess payment is around Rs.10,00,000/- (Rupees ten lakhs) only; on 24th August 2002 they handed over to accused No.4 demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only bearing No.461247 dated 24th August 2002 at Gangtok and they have not received any goods against the order they had placed along with the said draft and time and again, they requested the company to reconcile the account and the accused-company had cheated Rs.2,40,000/- (Rupees two lakhs forty thousand) only, thus causing injury and loss to the tune of lakhs. While filing the complaint-petition, the complainant appended copies of the letters of the complainant dated 24th August 2002; demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only; official letter dated 8th April 2003 of UCO Bank showing the factum of issuance of demand draft dated 24th August 2002 drawn in favour of National Panasonic India Pvt. Ltd. and the office letter dated 24th August 2003 of Rajeev Electronics pertaining to a supply order.

9. There is no dispute about the issuance of the said demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only and also acceptance of it by the petitioners-

company through its authorised agent. A bare perusal of the allegations made in paragraph 4 of the complaint shows that the complainant did not give any details or particulars about the excess payment of around Rs.10,00,000/- (Rupees ten lakhs) only for supply of any kind/item of goods and no specific/related document was filed/placed before the learned Court below at the time of filing of the complaint-petition. So far the allegations made in paragraphs 5 and 6 of the complaint-petition are concerned as discussed above, there is no dispute about the handing over of the demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only to the petitioners-company, but only the dispute is that according to the petitioners-company, the aforesaid payment was received towards part payment of the outstanding dues of the company from the complainant and on the other hand, it is the case of the complainant that the petitioners-company had accepted Rs.2,40,000/- (Rupees two lakhs forty thousand) only in draft for supply of certain goods. Further perusal of the complaint-petition and the documents filed by the complainant, particularly, the supply order dated 24th August 2003 (emphasis given) shows that the Rajeev Electronics, i.e. the respondent made supply order for Colour Televisions and Washing Machines on 24th August 2003 and there is no material on record for showing the factum of the existence of

supply order of the respondent for which the respondent-complainant handed over demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only in the year 1982. At this stage, the supply order dated 24th August 2003 is relevant and, accordingly, it is quoted below: -

" **RAJEEV ELECTRONICS**

STADIUM ROAD, GANGTOK, PHONE : 23779 & FAX 26068, SERVICE :- 23590

Ref. No..... Date .....

Ref. No. 105/02-03/08/RE/Sales Dated 24.08.2003.

To

M/s. National Panasonic India Pvt. Ltd.,
Calcutta.

SUPPLY ORDER

COLOUR TELEVISIONS

1.	MODEL	21 S 150	-	10 NOS.
2.		20 S 150	-	10 NOS.

WASHING MACHINE

1.	MODEL	NAW 651	-	05 NOS.

For Rajeev Electronics,
Sd/-
(Manager) "

The letter dated 24th August 2002 issued by the Manager of the Rajeev Electronics appended to the complaint-petition is also important for consideration and as such this letter dated 24th August 2002 is also quoted below: -

" **RAJEEV ELECTRONICS**

STADIUM ROAD, GANGTOK, PH: 23779 & FAX 26068, SERVICE: - 23590

Ref. No..... Date .....

Ref. No.105/02/03/08/RE/Sales Dated 24.08.2002.

To

M/s. National Panasonic India Pvt. Ltd.,
Calcutta.

Dear Sirs,

Enclosed please find herewith a Demand Draft bearing Instrument No.461247 dated 24.08.2002 for Rs.2,40,000=00 (Rupees two lacs forty thousand) only drawn in your favour payable at UCO Bank, Calcutta.

Kindly acknowledge receipt.

Thanking you,
Yours truly,
For Rajeev Electronics,
Sd/-
(Manager) "

10. Reference is given to the above supply order dated 24th August 2003 which shows that it is the supply order made by the respondent for which it is alleged that the

complainant-respondent had handed over a demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only to the petitioners-company. In the complaint-petition, it is specifically stated that the complainant, on 24th August 2002, handed over the said demand draft and along with the said demand draft, the complainant had also placed an order for supply of certain products but, the complainant did not produce copy of the said supply order which was made and handed over along with the demand draft dated 24th August 2002 and instead of it, the complainant produced and appended a copy of the supply order of 24th August 2003 (emphasis given). Now, a question arises whether this supply order dated 24th August 2003 shall be treated as the supply order which was made and handed over by the respondent complainant along with the said demand draft to the petitioners-company through the accused No.4 on 26th August 2002? According to me, a man of reasonable prudence will say that the supply order dated 24th August 2003 has no connection or relevancy with the said demand draft of Rs.2,40,000/- (Rupees two lakhs forty thousand) only.

The above letter dated 24th August 2002 is addressed to the petitioner No.1 company which also does not speak about any supply order for which the said draft of

Rs.2,40,000/- (Rupees two lakhs forty thousand) only was drawn in favour of the petitioner No.1 company.

11. In my considered view, the learned Judicial Magistrate, East Sikkim, Gangtok did not examine and consider the allegations made in the complaint and the documents filed by the complainant morefully and carefully. It is well-settled that allegations in complaint should be examined by the Court and it is also the duty of the Court to see as to whether such allegations make out the prima facie case as the same is relevant consideration and also whether the offence has been made out or not.

12. According to me, it is only when a Magistrate applies his/her mind for proceeding under Section 200 Cr.P.C. and subsequent sections of Chapter XV or under Section 204 Cr.P.C. of Chapter XVI that it can be positively stated that he/she had applied his/her mind and taken cognizance in accordance with law. Here, in the instant case, it is not so.

Generally and ordinarily, the High Courts in its exercise of inherent jurisdiction under Section 482 Cr.P.C. or under Sectin 401 Cr.P.C. do not quash or interfere with the order

taking the cognizance of offence as the same is an ad-interim order unless there is infirmity in the decision making process or there are no sufficient grounds for initiation of proceeding against the accused person either, for a summons-case or a warrant-case.

The High Court can look into the legality of the order taking cognizance of the case by looking into the complaint and by perusal of the available materials on record. It is also well-settled that whether a Magistrate chooses to take cognizance, he/she can peruse the complaint and if satisfied that there are sufficient grounds for proceeding, he/she can straightway issue process to the accused, but before he/she does so, he/she must apply his/her mind with the requirement of Section 200, 201, 202 and 203 Cr.P.C. and record the evidence of the complainant or his witnesses and also shall examine those available materials on record and if the Magistrate is not satisfied, he/she shall dismiss the complaint by recording the reasons for doing so.

13. The case laws cited by the learned counsel for the respondent are the settled law of the land which does not help the case of the complainant-respondent in the instant case for the following reasons that the learned Judicial Magistrate,

East Sikkim, Gangtok did not apply her judicial mind while taking the cognizance of the offence under Sections 420/406/418/427/34 of the Indian Penal Code and the learned Judicial Magistrate had completely lost the sight of the said document, i.e. supply order dated 24th August 2003 while passing the impugned order and apart from that the learned Judicial Magistrate also failed to see and examine the nature of the case and also the available materials on record carefully. In my considered view, there are no sufficient grounds for proceeding with the case against the accused persons including the petitioners under Sections 420/406/418/427/ 34 of the Indian Penal Code. I am also of the view that the learned Court below acted upon the complaint-petition just as a routine work, thus losing the sight of the requirement and importance of Section 200 and 203 of the Code of Criminal Procedure and other relevant sections of Chapter XV and XVI of the Code of Criminal Procedure while passing the impugned order.

14. For the reasons, discussions and observations made above, this Court has no alternative but, to quash the impugned Order dated 9th April 2003 passed by the Judicial Magistrate, East Sikkim at Gangtok in Criminal Case No.8 of 2003 (D.C.).

N. Kuli

15. In the result, this revision petition is allowed, thus quashing the impugned order with costs of Rs.5,000/- (Rupees five thousand) only which shall be paid by the respondent/complainant to the petitioners within a period of 2 (two) weeks from today.

N. S. Singh

(N. S. Singh)
Judge
23-09-2003